

A consumer is the important visitor on our premises.
He is not dependent on us. We are dependent on him.

-Mahatma Gandhi



TAMIL NADU ELECTRICITY OMBUDSMAN

4th Floor, SIDCO Corporate Office Building, Thiru-vi-ka Industrial Estate,
Guindy, Chennai – 600 032.

Phone : ++91-044-2953 5806, 044-2953 5816 Fax : ++91-044-2953 5893

Email : tneochennai@gmail.com Web site : www.tnerc.gov.in

Before The Tamil Nadu Electricity Ombudsman, Chennai
Present : Thiru. N.Kannan, Electricity Ombudsman

A.P. No. 95 of 2023

Thiru R.John George,
M/s.Hindustan Unilever Limited,
RS Nos. 270-275, St. Mary's Road,
Kodaikanal – 624 101.

. Appellant
(Rep. by Thiru R.John George &
Thiru Dwarakesh Prabhakaran, Advocate)

Vs.

The Deputy Finance Controller,
Dindigul Electricity Distribution Circle,
TANGEDCO,
Dindigul – 624002.

. . . . Respondent
(Thiru M.Gunasekaran, DFC/Dindigul)

Petition Received on: 29-12-2023

Date of hearing: 21-02-2024

Date of order: 05-03-2024

The Appeal Petition received on 29.12.2023, filed by Thiru R.John George, M/s. Hindustan Unilever Limited, RS Nos. 270-275, St. Mary's Road, Kodaikanal – 624 101 was registered as Appeal Petition No. 95 of 2023. The above appeal petition came up for hearing before the Electricity Ombudsman on 21.02.2024. Upon perusing the Appeal Petition, Counter affidavit, written argument, and the oral submission made on the hearing date from both the parties, the Electricity Ombudsman passes the following order.

ORDER

1. Prayer of the Appellant:

The Appellant has prayed to set aside the impugned Order dated 02.12.2023 and reclassify the Tariff to be changed from Tariff-III to Tariff -I for the High Tension (HT) Service Connection No. 323.

2.0 Brief History of the case:

2.1 The Appellant M/s. Hindustan Unilever Limited has stated that he was running a factory engaged in soil remediation process which was charged under the category Tariff III and request for tariff change from Tariff III to Tariff I.

2.2 The Respondent has stated that the Appellant's plant is a non-manufacturing in nature hence tariff change from Tariff III to Tariff I is not feasible of compliance.

2.3 Hence the Appellant has filed a petition with the CGRF of Dindigul EDC on 25.09.2023 requesting for tariff change.

2.4 The CGRF of Dindigul EDC has issued an order dated 02.12.2023. Aggrieved over the order, the Appellant has preferred this appeal petition before the Electricity Ombudsman.

3.0 Orders of the CGRF :

3.1 The CGRF of Dindigul Electricity Distribution Circle issued its order on 02.12.2023. The relevant portion of the order is extracted below: -

“Order:

With a above findings in para 6.0, the Forum comes to the conclusion that the prayer of the petitioner to reclassify the tariff of HT SC.No.323 of M/s. Hindustan Unilever Limited at Kodaikanal from Miscellaneous Tariff III to HT Tariff I (Industries, Factories, Information Technology Services) is not feasible as per Tariff order No.07 of 2022 in T.P.No.1 of 2022 Dt 09.09.2022 of TNERC. Hence the petition No.33/2023 is dismissed.”

4.0 Hearing held by the Electricity Ombudsman:

4.1 To enable the Appellant and the Respondent to put forth their arguments, a hearing was conducted on 21.02.2024 through video conferencing.

4.2 The Appellant Thiru R.John George and Thiru Dwarakesh Prabhakaran, Advocate attended the hearing and put forth their arguments.

4.3 The Respondent Thiru M.Gunasekaran, DFC/Dindigul of Dindigul Electricity Distribution Circle attended the hearing and put forth his arguments.

4.4 As the Electricity Ombudsman is the appellate authority, only the prayers which were submitted before the CGRF are considered for issuing orders. Further, the prayer which requires relief under the Regulations for CGRF and Electricity Ombudsman, 2004 alone is discussed hereunder.

5.0 Arguments of the Appellant:

5.1 The Appellant has stated that he is a renowned entity located at St. Mary's Road, Kodaikanal, and is bringing forth this petition with utmost urgency and importance. The primary issue at hand revolves around the Petitioner's request for a Tariff Change from Tariff-III (TF-III) to Tariff-1 (TF-I) in respect of the Petitioner's High Tension (HT) Service Connection No 323, governed by the Tamil Nadu Generation and Distribution Corporation Limited (TANGEDCO). The Petitioner had made a formal request on 10th October 2020 wherein it sought for a Tariff Change emphasizing the transition from a commercial tariff classification to an industrial tariff.

5.2 The Appellant has stated that he operates a factory at Kodaikanal which is duly registered under the Factories Act, 1948 ("Factories Act"), under Registration No. DGL00094. The same is valid till 31st December 2024. A copy of the said Registration is annexed herewith for your perusal and marked as Annexure-1. The Petitioner is presently engaging in soil remediation process at its factory premises located at St. Mary's Road, Kodaikanal, which process encompasses washing, retorting, and homogenization, processes facilitated by machinery. Furthermore, there are more than 100 workers actively participating in these operations, firmly establishing these operations as industrial activities.

5.3 The Appellant has stated that he has embarked on the process of Soil remediation presently undertaken at its Kodaikanal factory since March 2021 which is manufacturing process as defined under the factories Act. The term 'manufacturing process is defined under Section 2(k) of the Factories Act as follows "manufacturing process means any process for making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing or otherwise treating or adapting any article or substance with a view to its use, sale, transport delivery or disposal.

5.4 The Appellant has stated that his factory is engaged in manufacturing process involving treatment using soil washing, retorting, homogenisation processes and output from the manufacturing product of treated soil & by-product i.e. elemental mercury. The treated clean soil is delivered back to the factory land (delivery of remediation standard is checked by NEERI scientists) the waste generated from the manufacturing process is disposed of.

5.5 The Appellant has stated that the Tamil Nadu Pollution Control Board (TNPCB) has accorded its approvals in the context of the operations at the Petitioner's Kodaikanal factory. Under Section 21 of the Air (Prevention and Control of Pollution) Act, 1981. ("Air Act) the TNPCB has granted consent for the operation of the "Industrial plant". This consent also extends to the discharge of emissions from stacks/chimneys. Furthermore, it encompasses the operation of the facility for the production of the specified products and by-products, namely Treated Soil as the primary product and Mercury as the by-product.

5.6 The Appellant has stated that under Section 25 of the Water (Prevention and Control of Pollution) Act, 1974, ("Water Act) the TNPCB has sanctioned the discharge of sewage and trade effluent. This consent likewise pertains to the operation of the facility for the aforementioned manufacturing of Treated Soil and Mercury.

5.7 The Appellant has further stated that the TNPCB has provided the essential authorization to responsibly dispose of the waste produced during the manufacturing process at the sanctioned Treatment Storage Disposal Facility.

5.8 The Appellant has declared that during the course of its operations has undertaken several critical steps to ensure effective and compliant soil remediation activities. Firstly, an investment approximating Rs 70 crores has been made for the incorporation of indispensable equipment and machinery, comprising of a soil washing plant, soil retorting plant, soil homogeniser, water treatment plants and air handling units. A copy containing the details of the manufacturing process, equipments and machinery installed are annexed herewith for perusal and marked as Annexure 4(1).

5.9 The Appellant has displayed a commendable commitment to manpower, maintaining an average of 140 personnel over the past year. Its utilization of electrical power stands testament to its operations, with a Maximum Demand ranging between 629 to 1134 and an average consumption of 245002 kwh over the previous year.

5.10 The Appellant has stated that his factory has sustained its factory license (DGL 00084) continuously from 1983 till date. While it did suspend its thermometer manufacturing operations in 2001, it seamlessly continued other manufacturing tasks including the export of glass culets and decontamination of plant & machinery from March 2021, the factory embraced soil remediation as part of its operations.

5.11 The Appellant has stated that it has consistently corresponded with TNEB, particularly with the SE/TANGEDCO, Dindigul, in seeking change in their electricity tariff classification from commercial to industrial for their HT Power Service No. 059094500323. In the letter dated 10th October 2020, the Petitioner has explained that they were transitioning from soil remediation pilot plant trials conducted under commercial tariff to full-scale soil remediation work, which is considered an industrial activity. In a subsequent letter dated 11th February 2021, the Petitioner reiterated their request after commencing the remediation work and obtaining necessary permissions. In the Petitioner's final letter dated 9th February 2022, they provided additional documentation and urged that, as a registered factory, they should be eligible for HT Industrial Tariff-1 based on the Tariff Schedule, thus requesting a tariff change from commercial Tariff-III to Industrial Tariff-1. The sequence of their

submissions began with their first letter dated 10-10-2020, followed by subsequent letters on 11-02-2021, 09-02-2022, and the most recent being 01-09-2022.

5.12 The Appellant has stated that the TANGEDCO, DGL, initially responded to the Petitioner's request for a tariff change in a letter dated January 20, 2021 wherein they requested additional documentation to support the tariff change, citing the Tariff Order issued by TNERC on August 11, 2017, which specified that High Tension tariff applied to manufacturing and industrial establishments and registered factories only. In the second response letter, dated September 28, 2022, TANGEDCO informed the Petitioner that they had submitted the tariff change proposal clarification to their headquarters and would take further action once they received the required clarification or guidelines in the communication from TANGEDCO dated July 26, 2023, the Petitioner has been informed that the requested tariff change from Commercial III to Industrial was not feasible due to the Petitioner's activities not falling under the industries/Factories category as per Tariff Order No. 07 of 2022 in TP No 1 of 2022 dated September 9 2022 in Schedule 6.1.2. Therefore filed Petition No: 33 dt 25/09/2023 before the CGRF, Dindigul Electricity Distribution Circle seeking the following relief

“1. In light of the above the Petitioner earnestly prays before this Honorable Authority to re-evaluate the Petitioner's case and reclassify the Tariff to be changed from Tariff-III (TF-III) to Tariff- (TF-1) for the High Tension (HT) Service Connection No 323 of the Petitioner.

2. It is further prayed that in the light of Sl. No.1 prayer being granted the same shall be retrospectively applicable from the date from which the Petitioner has been paying electricity charges under Tariff-II (TF-III) till the disposal of this case.”

The said petition has been dismissed by the Impugned Order dt. 02.12.2023 of the CGRF, Dindigul Electricity Distribution Circle. The Petitioner is therefore constrained to file this appeal/petition against the Impugned Order before this Hon'ble Electricity Ombudsman on the following grounds:

- i. That the Impugned Order is unlawful, arbitrary, illegal irrational and perverse.
- ii. That the Impugned Order has wrongly held that the Tariff Order No. 07/2022@para 6.1.2.1 (1) of the Tariff Schedule is INCLUSIVE in nature as it

- covers all registered factories and the petitioner's factory does not fail under any exclusion.
- iii. That the Impugned Order has misread para 6.1.2.1 as para (1) covers all registered factories and paras (ii) to (iv) specifically provide that certain other establishments will also be entitled to be treated as HT-Tariff 1.
 - iv. That the Impugned Order has incorrectly relied on the exclusion for LPG Bottling Plants without appreciating that there is no such exclusion for the Petitioner's factory.
 - v. That the Petitioner's factory very much qualifies as an Industry as it is actively carrying on manufacturing activities and is eligible for HT-Tariff 1 and should not be treated as Miscellaneous (HT Tariff III).
 - vi. That the Petitioner's factory is a registered factory (Registration No. DGL00094) having a valid and subsisting registration (Registration No: DGL00094) under the Factories Act, 1948 and the Tamil Nadu Factories Rules, 1950, which is valid up to 31/12/2024.
 - vii. That the Petitioner is presently engaged in soil remediation, which is manufacturing industrial activity done at its factory premises located at St. Mary's Road Kodaikanal, which encompasses washing, retorting, and homogenization of soil facilitated by machinery. The output from the manufacturing process is treated soil and the by-product is elemental mercury. The remediation consists of washing. The soil with water and segregating into fractions in a soil washing plant, further a portion of the soil is treated in vacuum and high temperature for removing mercury in a retort plant, in the next step the cleaned soil from washing and retorting is homogenized in a homogenizing plant before the treated soil is used in remediation. The residual waste generated from the manufacturing process is treated and disposed of into a govt approved TSDF. In the manufacturing process the Plant & machinery used are Soil Washing Plant, Retorting Plant, Homogenization Plant, 3 water treatment plants viz Process Water Treatment Plant, Sewage Treatment Plants, Air treatment units and Wet scrubber for off gas. Details of the manufacturing process and the equipment/machinery used are given in Annexure 4(1). Pg. 29-30 of the Petitioner's Typed set.

- viii. That the phrase "manufacturing process is defined under section 2(k) of the Factories Act, 1948 as follows manufacturing process" means any process for- making altering, repairing ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing, or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal, or." The petitioner submitted that it is engaged in soil remediation, which involves the washing cleaning, and treating of soil to produce treated soil', 'elemental mercury for use and wastes for disposal. Therefore, the Petitioner's activities are manufacturing activities as defined under the Factories Act, 1948.
- ix. That the Petitioner installed plant & machinery with assets value of around Rs.70 crores, is presently engaging an average of 140 workers in its factory & used electrical power of around 1200 KVA & 3,70,000 units for manufacturing/industrial activity.
- x. That the Petitioner is operating the factory with valid consents & authorization from the Tamil Nadu Pollution Control Board (TNPCB) in the context of the manufacturing/industrial operations at the Petitioner's Kodaikanal factory under the Air (Prevention and Control of Pollution) Act 1981, Water (Prevention and Control of Pollution) Act, 1974, and the Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016 (Annexure 3(i), 3(ii) & 3(iii), Pg 4-28 of the Petitioner's Typed Set).
- xi. That the TNPCB's consent to operates (@Pg 4 of the Petitioner's Typed Set) specifically recognizes the industrial activities carried out by the Petitioner and states "Authorizing the occupier to operate the industrial plant. The consents are given for the "manufacture of products". "Treated soil as product & mercury as the by-product. The authorization of hazardous and other wastes is granted by the TNPCB for generation & disposal during the manufacturing industrial activities carried out.
- xii. That the manufacturing operations are carried out in 7 days x 3 shifts in retorting plant & analytical lab and 6 days x 1 shift in other plants. The production output from each plant is recorded in production logs. The residual

- wastes generated from manufacture are dispatched to govt approved TSDF for further treatment and disposal.
- xiii. That the Petitioner has been enjoying the Industrial Tariff from the year 1984 up till 2010. The Petitioner was shifted to Commercial Tariff from 2010 when the factory applied for increase in maximum demand of electrical power for the soil remediation process. However, due to various issues with regard to statutory approvals litigation installation of manufacturing facilities including importing machinery etc. the Petitioner was unable to begin the soil remediation process until March 2021. Subsequently, the Petitioner received all the required approvals and began the soil remediation from March 2021 and the same is going on till date.
- xiv. That since the Petitioner had commenced operations, i.e, soil remediation, which is a manufacturing activity, the Petitioner had requested for a Tariff Change from Tariff III (TF-III) to Tariff-1 (TF-1) (March 2021 onwards) vide letter dt 10/10/2020. The Petitioner had sent further letters dt. 11/02/2021, 09/02/2022, and 01/09/2022 reiterating the request and submitting documents as requested by the Respondent evidencing the manufacturing/industrial operations carried out by the Petitioner.
- xv. That the Respondent, vide letter at 26/07/2023 rejected the Petitioner's request for tariff change by stating that the Petitioner was not covered under Schedule 6.1.2 of Tariff Order No 07 of 2022 in T P No 1 of 2022 dt. 09 09 2022 (Tariff Order).
- xvi. That the aforesaid rejection is due to a misreading of Schedule 6.1.2 of the Tariff Order Clause (1) of Schedule 6.1.2.1 states as follows: All manufacturing and industrial establishments and registered factories..... "It is submitted that the clause clearly states that the HT Tariff I under the said schedule is applicable to all registered factories. It is submitted that as previously stated the Petitioner is a registered factory with a subsisting registration, which is valid up to 31/12/2024. It is further submitted that there are no exceptions or exclusions mentioned. Therefore, as a registered factory the Petitioner is entitled to High Tension Tariff I, which is available to industries and factories. It is also submitted that as elaborated in the prior

paras the Petitioner is also carrying out manufacturing activities as defined under section 2(k) of the Factories Act, 1948. Therefore, the Petitioner is entitled to High Tension Tariff I on this ground as well.

- xvii. That while there is a specific exclusion for LPG bottling plants from the benefit of High Tension Tariff the fact that there is no corresponding exclusion for the Petitioner's factory clearly demonstrates that the Petitioner's factory can be classified only under Clause (1) of Schedule 6.1.2.1.

5.13 The Appellant has prayed to set aside the impugned Order dated 02.12.2023 and consequentially direct the Respondent to re-evaluate the petitioner's case and reclassify the Tariff to be changed from Tariff-III (TF-III) to Tariff (TF-1) for the High Tension (HT) Service Connection No. 323 of the Petitioner retrospectively from the date from which the Petitioner has been paying electricity charges under Tariff-III (TF-III) till the disposal of this case.

6.0 Arguments of the Respondent:

6.1 The Respondent has submitted that the High Tension Service No. 05 909 450 0323 M/s. Hindustan Unilever Limited installed at St. Mary's Road Kodaikanal 624 101 in Dindigul District. It is submitted that, M/s. Hindustan Unilever Limited having High tension supply vide Service No.323 and is availing power for soil cleaning work. The service was effected on 02.07.2010 under HT commercial category. The consumer has applied for Tariff change from HT tariff commercial Industrial citing that the cleaning of soil is Industrial activity on, the change of Tariff was not considered as per the provisions of the Tariff order. The HT service is utilized for sand cleaning and not any manufacturing/ production of goods.

6.2 The Respondent has submitted that the relevant tariff order in force was Tariff order No. 1 of 2017 dated 11.08.2017 is reproduced as below.

“HT Tariff I (a)

- 1. All manufacturing and industrial establishments and registered factories including Tea Estates, Textiles, Fertilizer Plants, Steel Plants, Heavy Water Plants, Chemical plants. However, registered factories such as LPG bottling Units which are of non-manufacturing nature are not to be included in this tariff category.*

2. Common effluent treatment plants, Industrial estate's water treatment/supply works,
3. Cold storage units

6.1.2.2 This tariff is also applicable to Information Technology services as defined the ICT Policy 2008 of Government of Tamil Nadu. The definition is reproduced below:

"IT services are broadly defined as systems integration, processing services, information services outsourcing, packaged software support and installation, hardware support and installation"

Information Technology Services includes:

(a) Systems integration includes:

- i. Network Management Services
- ii. Applications Integration

(b) Processing services includes:

- i. Outsourced Services in Banking, HR, finance, Technology and other areas
- ii. Outsourced Back office support or Business transformation and Process Consulting Services.

(c) Information Services Outsourcing includes:

- i. Outsourced Global Information Support Services
- ii. Knowledge Process Outsourcing
- iii. Outsourced Global Contact Centre Operations
- iv. Outsourced Process Consulting Services.

(d) Packaged Software Support and Installation includes:

- i. Software Design and Development, Support and Maintenance
- ii. Application installation, support and maintenance
- iii. Application testing.

(e) Hardware Support and Installation includes:

- i. Technical and network operations support
- ii. Hardware installation, administration and management
- iii. Hardware Infrastructure maintenance and support

(f) This tariff is also applicable to Aeronautical services provided by the Airports under Airports Authority of India. The Non-Aeronautical services provided shall be categorised under HT III Commercial/Miscellaneous category.

(g) This tariff is also applicable to start-up power provided to generators. The generators are eligible to get start-up power under this tariff after declaration of CoD. The demand shall be limited to 10% of the highest capacity of the generating unit of the generating station or the percentage auxiliary consumption as specified in the

Tariff Regulations, whichever is less. The supply shall be restricted to 42 days in a year. Drawal of power for a day or part thereof shall be accounted as a day for this purpose. Power factor compensation charges are not applicable for start-up power.

6.3 The Respondent has submitted that the consumer has filed a petition before the CGRF Dindigul on 25.09.2023 seeking change in tariff, The CGRF has issued the order as per the provisions of the Tariff order the change of Tariff is not feasible of compliance and dismissed the petition.

6.4 The Respondent has submitted that the petitioner has now filed Appeal before the Hon'ble Electricity OMBUDSMAN on 28.12.2023 against the order of the CGRF The petition has been filed without any merits and devoid of Merits and liable for rejection. The parawar replies to the appeal are as follows. It is submitted that in respect of averments in para no 1 is factual and no remarks to furnish. It is submitted that in respect of averments in para no 2,3 and 4 the petitioner is registered under factories act, there is no manufacturing activities are carried out and has not produced any proof for industrial activities. Further in the Tariff order No 7 of 2022 dated 09.09.2022 has detailed list of industries and categories are mentioned in which it has not been covered. The clause 6.1. 2.1. is reproduced as follows;

"6.1.2.1 This Tariff is applicable to:

All manufacturing and industrial establishments and registered factories. This tariff is also applicable for Tea Estates, Textiles, Fertilizer Plants, Steel Plants, Heavy Water Plants, Chemical plants, Industrial Workshops, Private Milk dairies, Rice Mills, Roller Flour Mills, News Papers Printing Press, Ice & Ice cream manufacturing units, Tanneries, Hatcheries, Poultry Farm, Floriculture, Poly House / Green House, Hybrid Seeds processing units, Centralised preparation units of Food/sweets/bakery shops (provided sales counter is physically & electrically segregated & billed under respective HT-III/LT-V category), Packaging Units, Drug manufacturing units, Garment manufacturing units, Tyre retreading units, petroleum pipeline projects, Piggery farms, Analytical Lab for analysis of ore metals, Saw Mills, Toy/wood industries, Satellite communication centres, Mineral water processing plants attached with drinking water, Mineral water bottling plants and Solid Waste Processing Plant, concrete mixture (Ready Mix Concrete) units, Cutting of larger pipes and sheets into smaller one, Pumping of Oil and Gas units, RO plants Sea/hard water conversion done by Private/ on behalf of CMWSS Board under Design Build and Operate (DBO), Tamil Nadu State Transport Corporation repair

and Workshop and maintenance, Sericulture, Floriculture, Horticulture, Mushroom cultivation, cattle farming, Poultry & Bird farming and Fish/prawn/shrimp culture, Battery charging units, iii. Common effluent treatment plants, Industrial estate's water treatment/ supply works; iv. Cold storage units.

This tariff is also applicable to the Research & Development Centre Lab attached therein to the activities mentioned under (i) to (iv) above.

6.1.2.2 This tariff is also applicable to Information Technology services as defined in the ICT Policy 2008 of Government of Tamil Nadu. The definition is reproduced below: "IT services are broadly defined as systems integration, processing services, information services outsourcing, packaged software support and installation, hardware support and installation." Information Technology Services includes:

(i) Systems integration includes:

- a. Network Management Services
- b. Applications Integration

(ii) Processing services includes:

- a. Outsourced Services in Banking, HR, finance, Technology and other areas like Data Centres.
- b. Outsourced Back office support or Business transformation and Process Consulting Services.

(iii) Information Services Outsourcing includes:

- a. Outsourced Global Information Support Services
- b. Knowledge Process Outsourcing
- c. Outsourced Global Contact Centre Operations
- d. Outsourced Process Consulting Services

(iv) Packaged Software Support and Installation includes:

- a. Software Design and Development, Support and Maintenance
- b. Application installation, support and maintenance
- c. Application testing.

(v) Hardware Support and Installation includes:

- a. Technical and network operations support
- b. Hardware installation, administration and management
- c. Hardware infrastructure maintenance and support

6.1.5 HT Tariff III (Miscellaneous category)"

From the above, it is clear that the service falls under HT Tariff III (Miscellaneous category) as per the prevailing Tariff order.

6.5 The Respondent has submitted that in respect of averments in para no 5, 6, 14 (X), 14 (XI) the Tamil Nadu Pollution Control Board approval could not be considered for Industrial activities. In respect of averments in para no 7, 8 and 14 (VII) it is clear that washing/ cleaning of sand does not fall under Manufacturing activities. The Hon TNERC in the matter of M.P.No. 14 of 2020 Thiru V.U.

Maruthachalam Coimbatore Vs The Superintending Engineer / South TANGEDCO, Tatabad Coimbatore has observed in para no 5.6 and 5.7 are as follows:

“From the submissions of the Respondent, it is seen that the Udyog Aadhar memorandum produced by the petitioner which was issued by the District Industries Centre shows that laundry works categorized under "service" category. The activity classified under service category does not have any manufacturing/production process of converting raw material into finished goods. For this reason, the laundry has been categorized by the DIC as service industry.”

6.6 The Respondent further referred that a similar case held before the Tamil Nadu Electricity Ombudsman vide Appeal no.16 of 2015 between M/s. Orion Venture Vs. TANGEDCO, in which the request of the petitioner to consider their laundry service under subsidized tariff was rejected by the TNEO vide order dated 20-07-2015 stating that the mechanized laundry is a service oriented enterprises and cannot be classified as a manufacturing unit and it cannot be categorized under Tariff III B and hence it was decided to be categorized under Tariff V.

From the above the cleaning of soil could not be considered as Manufacturing or production of Goods.

6.7 The Respondent has submitted that in respect of averments in para no 9, 10 and 14(XII) the No of persons working and connected load is not the criteria for applicability of tariff. The consumption is not the base for the tariff and purpose of usage of power is the criteria for applicability of Tariff.

6.8 The Respondent has submitted that in respect of averments in para no 11, at present there is no manufacturing. Now the service connection used is used only for soil cleaning work in the Soil affected areas.

6.9 The Respondent has submitted that in respect of averments in para no 12 and 14 (XV) the consumer was replied in this regard on 28.09.2022, 26.07.2023 & 18.10.2023 vide

1. Lr.No SE/DEDC/DGL/DFC/AO/R/AAO/HT/F.DOC/D.NO.744/2022 DT. 28.9.22
2. Lr.No SE/DEDC/DGL/DFC/AO/R/AAO/HT/F.DOC/D.NO.443/2023 DT. 26.7.23
3. Lr.No SE/DEDC/DGL/DFC/AO/R/AAO/HT/F.DOC/D.NO.619/2022 DT. 18.10.22

6.10 The Respondent has submitted that in respect of averments in para no 13 and 14 (XVI) the details requested by TANGEDCO for process the tariff change has not been satisfied the conditions in the tariff order applicable to HT Industry. It is submitted that in respect of averments in para no 14 (1) the CGRF has issued the order as per the provisions of the tariff order in force and as per LAW. It is submitted that in respect of averments in para no 14 (II) and (III) the clause 6.1.2.1 of the tariff schedule covers all factories the detailed list of categories are clearly mentioned in the Tariff order No 7 of 2022 dated 09.09.2022.

6.11 The Respondent has submitted that the in respect of averments in para no 14 (IV), (V) (VI) and (XVII) the exclusion of LPG bottling units is similar of the case which is having registered factories and has no manufacturing of goods. The same is applicable to this case and has to be classified under HT tariff III Miscellaneous categories. It is submitted that in respect of averments in para no 14 (XIII)

- i) That impugned Order is lawful, and legal as per TNERC Order
- ii) The order is issued as per TNERC 6.1.2.1 (i)
- iii) As per TNERC regulations, the consumer is not eligible for availing Industrial Tariff
- iv) Impugned Order is correct
- v) This service not used for factory production activities
- vi) The company has got approval for doing the the soil cleaning works only
- vii) The company is removing the waste from the soil only
- viii) Manufacturing activities / Sales Activities are not done in the company
- ix) The workers are used only cleaning the soil works
- x) Industrial operation is not done in the company
- xi) Sales activities not done in the company
- xii) Disposal work not done in the company
- xiii) The consumer accepted soil remediation work done from March 2021 and not done the manufacturing work.
- xv) As per rules and regulation of TNERC the tariff change petition is rejected and intimated to the consumer.
- xvi) As per instruction of Headquarters Tariff change from commercial to industrial is not feasible of compliance to the above consumer.

6.12 The Respondent has stated that from the above it is clear that M/s. Hindustan Unilever Industries at Kodaikanal having HT SC.No.323, is doing soil remediation work which is "Non- manufacturing in nature and hence clause 6.1.2.1(1) is not

applicable. In clause (ii) also, Soil remediation work has not been included in HT tariff 1A. Hence reclassification of Tariff of HT SC.no.323 of M/s Hindustan Unilever, Kodaikanal from Commercial tariff III to Industrial tariff I is not feasible of compliance as per tariff order no.07 of 2022 in T.P.No.1 of 2022 dt 09.09.2022 of TNERC. It is against the Tariff Order No.07 of 2022 in T.P. No.1 of 2022 Dated 09.09.2022 in Schedule 6.1.2.

6.13 The Respondent has prayed for the reasons stated above to dismiss the petition and pass orders which deem fit and proper in the facts and circumstances of the case and thus render justice.

7.0 Findings of the Electricity Ombudsman:

7.1 I have heard the arguments of both the Appellant and the Respondent. Based on the arguments and the documents submitted by them the following are the issues to be decided.

7.2 The Appellant has stated that they are a renowned entity located at St. Mary's Road, Kodaikanal. The primary issue at hand revolves around the Appellant's request for a tariff change from Tariff-III (TF-III) to Tariff-1 (TF-I) in respect of their High Tension (HT) Service Connection No. 323.

7.3 The Appellant made a formal request on 10th October 2020, seeking a tariff change emphasizing the transition from a commercial tariff classification to an industrial tariff. They claimed to operate a factory at Kodaikanal, duly registered under the Factories Act, 1948 ("Factories Act"), with Registration No. DGL00094, valid until 31st December 2024.

7.4 The Appellant claimed that they are currently engaging in a soil remediation process at their factory premises located at St. Mary's Road, Kodaikanal. This process involves washing, retorting, and homogenization, facilitated by machinery. Furthermore, they stated that more than 100 workers are actively participating in these operations, firmly establishing them as industrial activities.

7.5 The Appellant has stated that they commenced the process of soil remediation since March 2021, which qualifies as a manufacturing process as defined under the Factories Act. The term 'manufacturing process' is defined under Section 2(k) of the Factories Act as follows: "manufacturing process means any process for making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing or otherwise treating or adapting any article or substance with a view to its use, sale, transport delivery or disposal."

7.6 The Appellant has stated that their factory is engaged in a manufacturing process involving treatment using soil washing, retorting, and homogenization processes. The output from this manufacturing process includes treated soil and a by-product, namely elemental mercury. The treated clean soil is delivered back to the factory land, with the delivery of the remediation standard being checked by NEERI scientists. The waste generated from the manufacturing process is disposed of appropriately.

7.7 The Appellant argued that their factory qualifies as an industry as it is actively engaged in manufacturing activities. They contend that it should be eligible for HT-Tariff 1 and not be classified as Miscellaneous (HT Tariff III). Furthermore, they emphasized that their factory is registered under the Factories Act, 1948, and the Tamil Nadu Factories Rules, 1950, with a valid registration (Registration No: DGL00094) until 31/12/2024. The Appellant has requested to set aside the impugned Order dated 02.12.2023 and consequently direct the Respondent to re-evaluate their case and reclassify the tariff from Tariff-III (TF-III) to Tariff-1 (TF-1) for the High Tension (HT) Service Connection No. 323.

7.8 The Respondent argued that the Appellant applied for a tariff change from HT tariff commercial to industrial, citing that the cleaning of soil is an industrial activity. However, the Respondent stated that the change of tariff was not considered as per the provisions of the Tariff order. They emphasized that the HT service is utilized for sand cleaning and not for any manufacturing or production of goods.

7.9 The Respondent has argued that M/s. Hindustan Unilever Industries at Kodaikanal, with HT SC.No.323, is engaged in soil remediation work, which they claim is non-manufacturing in nature. Therefore, they contend that clause 6.1.2.1(1) is not applicable. Additionally, the Respondent stated that soil remediation work has not been included in HT tariff 1A as per clause (ii). Hence, they conclude that reclassification of the tariff of HT SC.no.323 of M/s. Hindustan Unilever, Kodaikanal, from Commercial tariff III to Industrial tariff I is not feasible or compliance as per Tariff Order No.07 of 2022 in T.P.No.1 of 2022 dated 09.09.2022 in Schedule 6.1.2.

7.10 In view of the above dispute, I would like to refer to the tariff existing for all manufacturing and industrial establishments and registered factories during the Appellant's claim period of March 2021, as outlined in Tariff Order No.1 of 2017 dated 11.08.2017 which is reproduced below:

“5.2.2.15 The Commission is of the view that the term ‘Registered Factories’ signifies factories registered under the Factories Act, 1948. As omission of the term ‘Registered Factories’ under HT Tariff IA may have some unintended consequences,

“6.1.2 High Tension Tariff I A:

Tariff category	Commission Determined Tariff	
High Tension Tariff 1 A	Demand charge in Rs./kVA/month	Energy charge in paise per kWh (Unit)
	350	635

6.1.2.1 This Tariff is applicable to:

- 1. All manufacturing and industrial establishments and registered factories including Tea Estates, Textiles, Fertilizer Plants, Steel Plants, Heavy Water Plants, Chemical plants. However, registered factories such as LPG bottling Units which are of non-manufacturing nature are not to be included in this tariff category.*
- 2. Common effluent treatment plants, Industrial estate’s water treatment/supply works,*
- 3. Cold storage units*

6.1.2.2 This tariff is also applicable to Information Technology services as defined in the ICT Policy 2008 of Government of Tamil Nadu. The definition is reproduced below:

“IT services are broadly defined as systems integration, processing services, information services outsourcing, packaged software support and installation, hardware support and installation.”

7.11 Further, I would like to refer TNERC Tariff Order in T.P. No.7 of 2022 dated 09.09.2022 which is reproduced below:

“6.1.2.1 This Tariff is applicable to:

i. All manufacturing and industrial establishments and registered factories.

ii. This tariff is also applicable for Tea Estates, Textiles, Fertilizer Plants, Steel Plants, Heavy Water Plants, Chemical plants, Industrial Workshops, Private Milk dairies, Rice Mills, Roller Flour Mills, News Papers Printing Press, Ice & Ice cream manufacturing units, Tanneries, Hatcheries, Poultry Farm, Floriculture, Poly House / Green House, Hybrid Seeds processing units, Centralised preparation units of Food / sweets / bakery shops (provided sales counter is physically & electrically segregated & billed under respective HT-III/LT-V category), Packaging Units, Drug manufacturing units, Garment manufacturing units, Tyre retreading units, petroleum pipeline projects, Piggery farms, Analytical Lab for analysis of ore metals, Saw Mills, Toy/wood industries, Satellite communication centres, Mineral water processing plants attached with drinking water, Mineral water bottling plants and Solid Waste Processing Plant, concrete mixture (Ready Mix Concrete) units, Cutting of larger pipes and sheets into smaller one, Pumping of Oil and Gas units, RO plants Sea/hard water conversion done by Private / on behalf of CMWSS Board under Design Build and Operate (DBO), Tamil Nadu State Transport Corporation repair and Workshop and maintenance, Sericulture, Floriculture, Horticulture, Mushroom cultivation, cattle farming, Poultry & Bird farming and Fish/prawn/shrimp culture, Battery charging units.

iii. Common effluent treatment plants, Industrial estate's water treatment/ supply works;

iv. Cold storage units;

v. This tariff is also applicable to the Research & Development Centre/Lab attached therein to the activities mentioned under (i) to (iv) above.

6.1.2.2 This tariff is also applicable to Information Technology services as defined in the ICT Policy 2008 of Government of Tamil Nadu. The definition is reproduced below:

“IT services are broadly defined as systems integration, processing services, information services outsourcing, packaged software support and installation, hardware support and installation.”

From the above TNERC tariff orders it is found that “*All manufacturing and industrial establishments and registered factories*” are to be classified under HT Tariff I.

7.12 In light of this dispute, it's pertinent to examine the relevant tariff orders, which stipulate Tariff I eligibility for "All manufacturing and industrial establishments and registered factories." Documents confirm the Appellant's status as a registered factory with the Government of Tamil Nadu, Directorate of Industrial Safety and Health, under Registration Number DGL00094 valid until 31/12/2024.

7.13 The next issue to be decided is the Respondent's argument that the Appellant's activities do not constitute manufacturing. In view of the above, I would

like to refer to the Factories Act, 1948, and the relevant content area referred herewith.

“THE FACTORIES ACT, 1948

ARRANGEMENT OF SECTIONS

CHAPTER I

PRELIMINARY

SECTIONS

1. *Short title, extent and commencement.*
2. *THE FACTORIES ACT, 1948*
3. *ACT NO. 63 OF 19481*
4. *[23rd September, 1948.]*
5. *An Act to consolidate and amend the law regulating labour in factories.*
6. *WHEREAS it is expedient to consolidate and amend the law regulating labour in factories;*
7. *It is hereby enacted as follows:—*
8. *CHAPTER I*
9. *PRELIMINARY*
10. **1. Short title, extent and commencement.**—(1) *This Act may be called the Factories Act, 1948.*
11. *2[(2) It extends to the whole of India 3***.]*
12. *(3) It shall come into force on the 1st day of April 1949.*
13. **2. Interpretation.**—*In this Act, unless there is anything repugnant in the subject or context,—*
14. *(a) “adult” means a person who has completed his eighteenth year of age;*
15. *(b) “adolescent” means a person who has completed his fifteenth year of age but has not*
16. *completed his eighteenth year;*
17. *4[(bb) “calendar year” means the period of twelve months beginning with the first day of*
18. *January*
19. *(c) “child” means a person who has not completed his fifteenth year of age;*
20. *5[(ca) “competent person”, in relation to any provision of this Act, means a person or an*
21. *institution recognised as such by the Chief Inspector for the purposes of carrying out tests,*
22. *examinations and inspections required to be done in a factory under the provisions of this*
23. *Act having*
24. *regard to—*
25. *(i) the qualifications and experience of the person and facilities available at his disposal; or*
26. *(ii) the qualifications and experience of the persons employed in such institution and*
27. *facilities*
28. *available therein,*
29. *with regard to the conduct of such tests, examinations and inspections, and more than one*
30. *person or*
31. *institution can be recognised as a competent person in relation to a factory;*
32. *(cb) “hazardous process” means any process or activity in relation to an industry specified*
33. *in the*
34. *First Schedule where, unless special care is taken, raw materials used therein or the*
35. *intermediate or*
36. *finished products, bye-products, wastes or effluents thereof would—*
37. *(i) cause material impairment to the health of the persons engaged in or connected*

33. *therewith, or*
34. *(ii) result in the pollution or the general environment:*
35. *Provided that the State Government may, by notification in the Official Gazette, amend the First*
36. *Schedule by way of addition, omission or variation of any industry specified in the said Schedule;]*
37. *(d) “young person” means a person who is either a child or an adolescent;*
38. *1. The Act has been extended to Dadra and Nagar Haveli by Reg. 6 of 1963, s. 2 and the First Schedule; Pondicherry by Reg. 7 of*
39. *1963, s. 3 and the First Schedule, Goa, Daman and Diu by Reg. 11 of 1963, s. 3 and the Schedule and Laccadive, Minicoy and*
40. *Amindivi Islands by Reg. 8 of 1965, s. 3 and the Schedule.*
41. *2. Subs. by the A.O. 1950, for sub-section (2).*
42. *3. The words “except the state of Jammu and Kashmir” omitted by Act 51 of 1970, s. 2 and the Schedule (w.e.f. 1-9-1971).*
43. *4. Ins. by Act 25 of 1954, s. 2 (w.e.f. 7-5-1954).*
44. *5. Ins. by Act 20 of 1987, s. 2 (w.e.f. 1-12-1987).*
45. *7*
46. *(e) “day” means a period of twenty-four hours beginning at midnight;*
47. *(f) “week” means a period of seven days beginning at midnight on Saturday night or such other*
48. *night as may be approved in writing for a particular area by the Chief Inspector of Factories;*
49. *(g) “power” means electrical energy, or any other form of energy which is mechanically*
50. *transmitted and is not generated by human or animal agency;*
51. *(h) “prime mover” means any engine, motor or other appliance which generates or otherwise*
52. *provides power;*
53. *(i) “transmission machinery” means any shaft, wheel, drum, pulley, system of pulleys, coupling,*
54. *clutch, driving belt or other appliance or device by which the motion of a prime mover is transmitted*
55. *to or received by any machinery or appliance;*
56. *(j) “machinery” includes prime movers, transmission machinery and all other appliances whereby*
57. *power is generated, transformed, transmitted or applied;*
58. ***(k) “manufacturing process” means any process for—***
59. *(i) making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning,*
60. *breaking up, demolishing, or otherwise treating or adapting any article or substance with a view*
61. *to its use, sale, transport, delivery or disposal; or*
62. *1[(ii) pumping oil, water, sewage or any other substance; or]*
63. *(iii) generating, transforming or transmitting power; or*
64. *2[(iv) composing types for printing, printing by letter press, lithography, photogravure or*
65. *other similar process or book binding; 3[or]]*
66. *(v) constructing, reconstructing, repairing, refitting, finishing or breaking up ships or*
67. *vessels; 3[or]*
68. *3[(vi) preserving or storing any article in cold storage;]”*

7.14 Regarding the Respondent's argument questioning the manufacturing nature of the Appellant's activities, reference is made to the Factories Act, 1948, which defines manufacturing processes such as *....washing, cleaning, breaking up, demolishing, or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal; ...* In the present case the process includes soil remediation activities such as washing, cleaning, and treating soil. These activities align with the operations conducted by the Appellant. Considering these findings, it is concluded that the Appellant's factory qualifies as a registered factory engaging in manufacturing activities as defined by the Factories Act, 1948.

7.15 The next issue is whether the Appellant is entitled to claim Tariff under HT Tariff I from March 2021. The Appellant declared that they had been enjoying the Industrial Tariff from the year 1984 up until 2010. However, the Appellant was shifted to the Commercial Tariff from 2010 when the factory applied for an increase in maximum demand of electrical power for the soil remediation process. Due to various issues regarding statutory approvals, litigation, installation of manufacturing facilities, including importing machinery, etc., the Appellant was unable to begin the soil remediation process until March 2021. Subsequently, the Appellant received all the required approvals and began the soil remediation from March 2021.

7.16 From the information provided, although the Appellant made a tariff change request from October 10, 2020, they commenced activities during March 2021. Hence, it is appropriate to classify the Appellant under Tariff I from March 2021. If any excess bills were claimed during this period, the same shall be adjusted as per Regulation 12 of the supply code.

8.0 **Conclusion :**

8.1 Based on the findings discussed above, it is concluded that the Appellant's HT service 323 is to be reclassified under HT Tariff I from March 2021. Accordingly, the petition is disposed of.

8.2 With the above findings AP No. 95 of 2023 is finally disposed of by the Electricity Ombudsman. No costs.

(N. Kannan)
Electricity Ombudsman

“நுகர்வோர் இல்லையேல், நிறுவனம் இல்லை”
“No Consumer, No Utility”

To

1. Thiru R.John George,
M/s.Hindustan Unilever Limited,
RS Nos. 270-275, St. Mary's Road,
Kodaikanal – 624 101.

2. The Deputy Finance Controller,
Dindigul Electricity Distribution Circle,
TANGEDCO,
Dindigul – 624002.

3. The Superintending Engineer,
Dindigul Electricity Distribution Circle,
TANGEDCO,
Meenakchinaickanpatti post,
Dindigul-624002.

- By Email

4. The Chairman & Managing Director,
TANGEDCO,
NPKRR Maaligai, 144, Anna Salai,
Chennai -600 002.

– By Email

5. The Secretary,
Tamil Nadu Electricity Regulatory Commission,
4th Floor, SIDCO Corporate Office Building,
Thiru-vi-ka Industrial Estate, Guindy,
Chennai – 600 032.

– By Email

6. The Assistant Director (Computer)
Tamil Nadu Electricity Regulatory Commission,
4th Floor, SIDCO Corporate Office Building,
Thiru-vi-ka Industrial Estate, Guindy,
Chennai – 600 032.

– **For Hosting in the TNERC Website**